

# Federal Register

## Part IV – Department of Education; 34 CFR Part 200 Improving the Academic Achievement of the Disadvantaged; Migrant Education Program; Final Rule

### **Sec. 200.81 Migrant Education Program Definitions.**

**Migratory child** means a child--

- (1) Who is a migratory agricultural worker or a migratory fisher; or
- (2) Who, in the preceding 36 months, in order to accompany or join a parent, spouse, or guardian who is a migratory agricultural worker or a migratory fisher--
  - (i) Has moved from one school district to another;
  - (ii) In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or
  - (iii) As the child of a migratory fisher, resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence.

**Migratory agricultural worker** means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary employment or seasonal employment in agricultural work, including dairy work.

**Migratory fisher** means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary employment or seasonal employment in fishing work. This definition also includes a person who, in the preceding 36 months, resided in a school district of more than 15,000 square miles and moved, as defined in paragraph (g), a distance of 20 miles or more to a temporary residence in order to obtain temporary employment or seasonal employment in fishing work.

**Move or Moved** means a change from one residence to another residence that occurs due to economic necessity.

**In order to obtain, when used to describe why a worker moved**, means that one of the purposes of the move is to seek or obtain qualifying work.

- (1) If a worker states that a purpose of the move was to seek any type of employment, i.e., the worker moved with no specific intent to find work in a particular job, the worker is deemed to have moved with a purpose of obtaining qualifying work if the worker obtains qualifying work soon after the move.
- (2) Notwithstanding the introductory text of this paragraph, a worker who did not obtain qualifying work soon after a move may be considered to have moved in order to obtain qualifying work only if the worker states that at least one purpose of the move was specifically to seek the qualifying work, and--
  - (i) The worker is found to have a prior history of moves to obtain qualifying work; or

- (ii) There is other credible evidence that the worker actively sought qualifying work soon after the move but, for reasons beyond the worker's control, the work was not available.

Scenarios:

- *One of the purposes of the move was...*
  - Scenario 1: ...to obtain qualifying work and the worker obtained qualifying work;
  - Scenario 2: ...to obtain any employment, and the worker obtained qualifying work soon after the move; Recruiters should be attentive to situations whereby the worker expresses specific intent to obtain only non-qualifying work.
  - Scenario 3: ...affirmed to be specifically to seek qualifying work, but the worker did not obtain the work.
    - Prior history of moves to obtain qualifying work, or
    - Other credible evidence

\*Specific intent to obtain non-qualifying employment would not qualify.

**Seasonal employment** means employment that occurs only during a certain period of the year because of the cycles of nature and that, by its nature, may not be continuous or carried on throughout the year.

**Temporary employment** means employment that lasts for a limited period of time, usually a few months, but no longer than 12 months. It typically includes employment where the employer states that the worker was hired for a limited time frame; the worker states that the worker does not intend to remain in that employment indefinitely; or the SEA has determined on some other reasonable basis that the employment is temporary. The definition includes employment that is constant and available year-round only if, within 18 months after the effective date of this regulation and at least once every three years thereafter, the SEA documents that, given the nature of the work, of those workers whose children were previously determined to be eligible based on the State's prior determination of the temporary nature of such employment (or the children themselves if they are the workers), virtually no workers remained employed by the same employer more than 12 months.

**Agricultural work** means the production or initial processing of crops, dairy products, poultry, or livestock, as well as the cultivation or harvesting of trees. It consists of work performed for wages or personal subsistence.

**Fishing work** means the catching or initial processing of fish or shellfish or the raising or harvesting of fish or shellfish at fish farms. It consists of work performed for wages or personal subsistence.

**Personal subsistence** means that the worker and the worker's family, as a matter of economic necessity, consume, as a substantial portion of their food intake, the crops, dairy products, or livestock they produce or the fish they catch.

**Qualifying work** means temporary employment or seasonal employment in agricultural work or fishing work.